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**To:** [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Barnes, Jennifer \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Carballo, Vivian \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#); [Wilson, Amelia \(EOIR\)](#)  
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**Subject:** Policy & Case Law Bulletin - May 4, 2018  
**Date:** Friday, May 04, 2018 3:47:33 PM

**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

| Policy & Case Law Bulletin  
May 4, 2018

### Federal Agencies

#### DOJ

- [DOJ Announces Dedication of Additional Prosecutors and Judges for Southwest Border Cases](#)

The Attorney General announced that thirty-five additional prosecutors will be dedicated to handling prosecutions of improper entry, illegal reentry, and alien smuggling along the southwest border. The Attorney General and EOIR Director also announced an increase in the number of judges assigned to adjudicate cases in courts along the southwest border through the assignment of eighteen current supervisory immigration judges to adjudicate cases either in person or by video conferencing (VTC).

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

#### DHS

- [DHS to Terminate Temporary Protected Status for Nepal](#)

The Secretary of Homeland Security determined that termination of the Temporary Protected Status (TPS) designation for Nepal was required pursuant to the statute. To allow for an orderly transition, the termination is delayed until June 24, 2019.

- [USCIS Updates Policy Memorandum on DNA Evidence in Support of Sibling Relationships](#)

USCIS updated its policy on the acceptance of DNA evidence supporting sibling relationships. The policy memorandum permits USCIS officers to suggest and consider direct sibling-to-sibling DNA test results, and provides standards for evaluating DNA results for full siblings and half siblings.

- [USCIS Updates Policy Guidance on Conditional Permanent Resident Status for EB-5 Immigrants](#)

The updated guidance reaffirms that USCIS provides immigrant investors documentation

of conditional permanent resident status until the Form I-829 is adjudicated or a final order of removal is issued.

## Supreme Court

CERT. DENIED

- [Sukhova v. Sessions](#)

No. 17-1263, 2018 U.S. LEXIS 2683 (April 30, 2018)

Question Presented: Whether litigation is a form of protected political expression which may be a ground for political asylum under the “well-founded fear of persecution” criterion in 8 U.S.C. § 1101(a)(42)(A)?

- [Sandhu v. Sessions](#)

No. 17-1267, 2018 U.S. LEXIS 2685 (April 30, 2018)

Questions Presented: 1) May, in a case seeking judicial review of the Board of Immigration Appeals’ disposition of an administrative motion to reopen and/or to reconsider, a court of appeals disregard addressing the merits of a sufficiently raised claim regarding whether the Board of Immigration Appeals failed to consider exercising its sua sponte authority based on a recent change in law? 2) May, in analyzing a claim of prejudicial ineffective assistance of counsel in removal proceedings, a court of appeals find a lack of an exercise of due diligence by a foreign national who during the relevant period decided not to file in propria persona with the Board of Immigration Appeals a then jurisdictionally barred administrative motion to reopen and/or to reconsider? 3) May, regarding documents not within the Board of Immigration Appeals’ relevant certified administrative record, a court of appeals take notice of an administrative agency’s own records that are accessible through that administrative agency’s own website?

- [Sales v. Sessions](#)

No. 17-7662, 2018 U.S. LEXIS 2671 (April 30, 2018)

Questions Presented: 1) Whether a California second degree murder conviction for aiding and abetting is categorically a divisible statute if it requires jury unanimity on an accomplice liability instruction? 2) Should the court consider a state’s accomplice liability laws to determine removability under the INA if the record of conviction is for aiding and abetting a nonviolent crime? 3) Does this Court’s decision in *Rosemond v. United States*, 134 S. Ct. 1240 (2014) generically define aiding and abetting under federal law, and do the elements of the statute categorically match the elements of accomplice liability under a natural and probable consequence instruction?

- [Medrano v. Sessions](#)

No. 17-8056, 2018 U.S. LEXIS 2776 (April 30, 2018)

No questions presented are available at this time.

## Fourth Circuit

- [Atseyinku v. Sessions](#)

No. 17-1557, 2018 WL 1968160 (4th Cir. Apr. 26, 2018) (unpublished) (MTR)

The Fourth Circuit denied the PFR, concluding that the Board did not abuse its discretion in denying the petitioner’s motion to reconsider because the Board correctly determined, based on the totality of circumstances, that the petitioner abandoned her permanent resident status. The court also concluded that the Board did not abuse its discretion in denying the petitioner’s motion to reopen since the petitioner’s newly submitted evidence was in fact previously available, and because she did not otherwise demonstrate that the

new evidence would have changed the result in her case.

### **Fifth Circuit**

- [Asmitia v. Sessions](#)

No. 17-60143, 2018 WL 1996440 (5th Cir. Apr. 26, 2018) (unpublished) (Asylum-General)

The Fifth Circuit denied the PFR, concluding that substantial evidence supports the Board's finding that "[e]ven assuming that [the petitioner] established a cognizable social group – 'family members of persons who actively oppose gangs in El Salvador by public defiance of gang authority,' she has not demonstrated that a central motive for the harm she suffered and fears is on account of her membership in the group." The court also concluded that the petitioner did not show that it is more likely than not that she would be tortured in El Salvador.

### **Sixth Circuit**

- [Mwamlenga v. Sessions](#)

No. 17-3796, 2018 WL 1960501 (6th Cir. Apr. 26, 2018) (unpublished) (Due Process)

The Sixth Circuit denied the PFR, rejecting the petitioner's challenge to the IJ's credibility finding where the Board did not rely on the IJ's credibility finding in affirming the removal decision. The court also rejected the petitioner's due process challenge where the IJ admitted the I-9 form without it being provided to the petitioner at least 15 days before the hearing, stating that "[t]he IJ retains the authority to determine how to treat an untimely filing."

### **Seventh Circuit**

- [Perez v. Sessions](#)

No. 17-1369, 2018 WL 2035302 (7th Cir. May 2, 2018) (CAT)

The Seventh Circuit granted the PFR and remanded, concluding that the Board did not make an adequate inquiry into the petitioner's near-escapes from MS-13 gang members and did not properly consider this factor when making a prediction about the risk of torture the petitioner would face if returned to Honduras. The court also held that "[t]he Board . . . erred when considering [the petitioner's] evidence that he could not relocate safely within Honduras, by too narrowly focusing on his exposure to particular MS-13 members rather than the gang as a whole."

### **Ninth Circuit**

- [Abass v. Sessions](#)

No. 16-74045, 2018 WL 1979016 (9th Cir. Apr. 27, 2018) (unpublished) (Asylum-General; CAT)

The Ninth Circuit granted the PFR, concluding that the Board disregarded and mischaracterized substantial evidence demonstrating that Ghanaian officials are unwilling to protect LGBT individuals. The court also held that the petitioner is statutorily eligible for asylum and is entitled to withholding of removal, and remanded for exercise of discretion. Additionally, the court held that the petitioner has met his burden for

protection under the CAT.

- [Nwadinobi v. Sessions](#)

No. 15-73246, 2018 WL 1978980 (9th Cir. Apr. 27, 2018) (unpublished) (Asylum-ACF; Due Process)

The Ninth Circuit granted the PFR in part and remanded, concluding that substantial evidence did not support the IJ's adverse credibility finding. The court found that "the record provides objective evidence that [the petitioner's] explanation for the discrepancy in his birth date across various forms of identification—evidence the IJ did not mention and was not at liberty to ignore—was plausible given Nigeria's lax recordkeeping and identity document practices." The court also found that "because [the petitioner] plausibly explained that he referred to his friend by multiple names, the IJ was required to provide a "specific, cogent reason for rejecting the evidence, and this reason must bear a legitimate nexus to that rejection.'" The court further found that there was substantial objective evidence that the unidentified translator at [the petitioner's] merits hearing offered faulty or unreliable translations, but there was no due process violation because the petitioner did not show prejudice. Additionally, the court found no due process violation when IJ "question[ed] [the petitioner] about testimony adduced during his brother's hearing held before the same IJ" because the petitioner did not show prejudice.

- [Kusnanto v. Sessions](#)

No. 11-73445, 2018 WL 2000351 (9th Cir. Apr. 30, 2018) (unpublished) (Asylum-Persecution)

The Ninth Circuit denied the PFR, concluding that substantial evidence supports the agency's adverse credibility determination, as well as its determination that the petitioner did not establish past persecution, where she alleged a series of incidents where she was robbed at gunpoint and threatened. The court also found that the petitioner did not establish a well-founded fear of persecution based on her membership in a disfavored group of Chinese Christians, where considering the general risk level of ethnic Chinese Christians, the petitioner did not present sufficient evidence of an individualized threat. The court further found that the petitioner did not establish that the persecution she suffered was committed by the government or by forces the government was either unable or unwilling to control.